



HOUSE BILL 165: Planned Community & Condo Act Amends

2011-2012 General Assembly

Committee:		Date:	June 29, 2011
Introduced by:	Reps. McGee, Weiss, Earle, Howard	Prepared by:	Giles S. Perry
Analysis of:	S.L. 2011-362		Committee Counsel

SUMMARY: *House Bill 165 makes changes to the Planned Community Act and the Condominium Act to require a claim of lien for an assessment to remain unpaid for 90 or more days before foreclosure, to require specified disclosure of information about homeowners' associations to potential purchasers, and to require the Real Estate Commission to prepare and make available information about restrictive covenants to potential purchasers*

CURRENT LAW: Under current law, when any homeowner or unit owner assessments levied against a lot or unit remain unpaid for 30 days or longer, the association is authorized to file a claim of lien against the property in the office of the clerk of superior court.

G.S. 47C-3-116 (North Carolina Condominium Act) and G.S. 47F-3-116 (North Carolina Planned Community Act) provide that the association may use power of sale foreclosure, Article 2A of Chapter 45, to enforce a lien for assessments, but may only use judicial foreclosure (Article 29A of Chapter 1) if the lien is solely for fines, interest, or attorney's fees.

BILL ANALYSIS:

Section 1 of the bill amends the North Carolina Planned Community Act to provide that an association, acting through its executive board, may foreclose a claim of lien under power of sale if the assessment remains unpaid for 90 days or more, and if the executive board votes to commence the proceeding against the specific lot.

Section 2 of the bill amends the North Carolina Condominium Act to provide that an association, acting through its executive board, may foreclose a claim of lien under power of sale if the assessment remains unpaid for 90 days or more, and if the executive board votes to commence the proceeding against the specific lot.

Section 3 of the bill amends the provisions of the Residential Property Disclosure Act, as follows:

- In **Section 3.(a)**, to amend the law providing that the Act does not apply to transfers between parties when both parties agree not to complete a residential property disclosure statement, to add an owners' association and mandatory covenants disclosure statement.
- In **Section 3.(b)**, to amend the list of required disclosures, to require the owner of real property to furnish to a purchaser an owners' association and mandatory covenants disclosure statement. The North Carolina Real Estate Commission is directed to develop the disclosure statement, which must include the specified elements.
- In **Section 3.(c)**, to amend the law requiring owners to deliver to purchasers disclosure statements, and providing that they may be included in the real estate contract, in an addendum, or in a separate document, to add owners' association and mandatory covenant disclosure statements.
- In **Section 3.(d)**, to amend the statute allowing the owner to discharge the duty to disclose by attaching a report to the residential property disclosure statement, to add owners' association and

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mandatory covenants disclosure statements, and by adding reports from attorneys as an acceptable form of disclosure.

- In **Section 3.(e)**, to amend the statute requiring correction to disclosure statements upon discovery of material changes in circumstances, to include owners' association and mandatory covenants disclosure statements.
- In **Section 3.(f)**, to amend the statute that provides a broker or salesman is not responsible for the owner's willful refusal to provide a prospective purchaser with a residential property disclosure statement, to include owners' association and mandatory covenants disclosure statements.
- In **Section 3.(g)**, to provide that Section 3 is effective January 1, 2012, and applies to real estate transfers or dispositions occurring on or after that date.

This section also provides that the North Carolina Real Estate Commission shall develop and make available the standard disclosure form required by G.S. 47E-4(b1), as enacted by Section 3.(b) of this act, by December 1, 2011.

Section 4 of the bill directs the North Carolina Real Estate Commission to develop and make available for homebuyers a brochure about restrictive covenants. The brochure shall include an explanation that unpaid assessments, fines, fees or charges may result in foreclosure of the owner's property. The brochure shall be available by December 1, 2011.

EFFECTIVE DATE: Effective when it becomes law, and applies to foreclosure actions filed on or after October 1, 2011.

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